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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,882	09/08/2003	Thomas Hurt	27343.00.8002	2630
23418	7590	12/29/2005	EXAMINER	
VEDDER PRICE KAUFMAN & KAMMHOLZ 222 N. LASALLE STREET CHICAGO, IL 60601			LUONG, SHIAN TINH NHAN	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/657,882	HURT ET AL.
	Examiner Shian T. Luong	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 November 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 112***

1. Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, the T-flange shaped upper, lower and opposed first and second side panel edge portion in the drawing does not resemble a T-shape. In fact, the drawing in Figure 6 shows the insert with a substantially hourglass shaped upper edge portion 54 and lower edge portion 56 and two substantially rectangular shaped side panel edge portions 58,60. There is no T-shaped portion in the drawing.

Applicant on page 14 of the response argues the objection to the term "T-shaped." Applicant argues that he is his own lexicographer and can determine the structure of this undefinable shape. But if applicant construes the shape of this structure to be T-shaped, then applicant has in fact redefined the term "T-shaped" into a totally different configuration known in the art. Hence, applicant's contention does not overcome the objection because the drawing does not resemble a T-shaped configuration as claimed and disclosed.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 3 and 7 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Lanius (US 3,4,838,445). Lanius discloses an organizer case comprising a tray 11 having a bottom wall

and a plurality of compartment walls formed unitarily with and upstanding from said bottom wall. Two of the compartmental walls extending in parallel relation and space apart a separation distance. The two parallel walls having confronting sidewall faces. The sidewall faces each having a plurality of first joint formers 36 extending in perpendicular relation to the bottom wall. An insert divider 40 extends between sidewall faces. The insert comprising a main wall having upper edge, lower edge, and opposed side edge flange portions. The main wall is of flat planar configuration having a generally uniform thickness. The side edge flanges extend in angled relation to the plane of the main wall. The side edge flange portions having a second joint formers 52 for action fit engagement with the first joint formers. The side edge flange portions being spaced apart a distance greater than the separation distance as shown in Figure 2. When the first and second joint formers are engaged, the side edge flange portions is still spaced apart a distance greater than the separation distance. The separation distance is the distance from the edge point of one of the joint formers to the joint former on two separate walls.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5. Claims 3,7,8,9,10 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese patent 3069109 in view of Spiegel (US 5,390,815). 3069109 discloses an organizer case comprising a having a bottom wall and a plurality of compartment walls formed unitarily with and upstanding from said bottom wall. Two of the complimented walls extending in parallel relation and space apart a separation distance. The two parallel walls having confronting sidewall faces. The sidewall faces each having a plurality of joint formers 8 extending in perpendicular relation to the bottom wall. An insert divider 2 extends between sidewall faces. The insert comprising a main wall having upper edge, lower edge, and opposed side edge flange portions. the main wall is of the planar configuration having a generally uniform thickness. The side edge flange portions having a second joint formers 9 for friction fit engagement with the first joint formers. 3069109 does not disclose an insert divider that has side flange portions being spaced apart Feater than a distance between the separation distance. However, Spiegel teaches a container with adjustable compartments. The insert divider 50 separates the tray into a variety of compartments. Some are diagonal across from one wall to another and another is straight across from one wall to another as shown in Figure 6. The purpose is to provide different sized compartments in order to accommodate articles of different shapes. Hence, it would have been obvious in view of Spiegel to form some of the divider with diagonal shape body to form different shaped compartments. The distance between the flanges may be at least 20% greater than the separation distance through routine experiments.

Applicant argues that there is no suggestion to modify the divider so as to make the solid divider of the base reference elastomeric. But the motivation is clearly taught by Spiegel. Spiegel on column 1 stated that even though boxes or compartments for a fixed size are generally

well known in the art, compartments for different sized articles are not readily available. Generally, if the user wants a snug fit, he has to choose a certain box or compartment with the appropriate size. To resolve this problem, Spiegel came up with a divider that is stretchable so it can be extended or retracted to a certain size in a box. In the figure shown in Figure 6, the divider in its engaged configuration has a distance greater than the separation distance between the two compartmental walls. In view of the teaching from Spiegel, it is not a deviation from the disclosure of Japanese patent because it allow the user to not only secure the divider between the exact distance between two compartmental walls, but also allows the user to divide the walls into different shape and size. Hence, applicant's argument is not found persuasive.

***Allowable Subject Matter***

6. Claims 1,2,4-6 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners, M.P.E.P. 203.08.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Erica Miller at (571) 272-4370.

For applicant's convenience, the official FAX number is **571-273-8300**. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Luong of Art Unit 3728 at the top of your cover sheet of any correspondence submitted.

Inquiries concerning the merits of the examination should be directed to Shian Luong whose telephone number is (571) 272-4557. The examiner can normally be reached on M-H from 7:00am to 4:00pm EST.

STL  
December 19, 2005

  
Primary Examiner  
Shian Luong  
Art Unit 3728